

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|-------------------------------------|---|---------------------|
| ANTOINE BARBER, | : | CIVIL ACTION |
| | : | |
| vs. | : | |
| | : | NO. 10-497 |
| DAVID DIGUGLIELMO; THOMAS | : | |
| ROWLANDS, JEFFREY BEARD, and | : | |
| CYNTHIA L. DAUB, | : | |

O R D E R

AND NOW, this 22nd day of June, 2010, upon consideration of the Petition for Writ of Habeas Corpus (Document No. 1, filed December 31, 2009), and after review of the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated April 28, 2010 (Document No. 12), and the record in this case, petitioner having filed no objections, **IT IS ORDERED** as follows:

1. The Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated April 28, 2010, is **APPROVED** and **ADOPTED**, except to the extent that she recommends that the habeas corpus petition be denied;
2. The Petition for Writ of Habeas Corpus filed by Antoine Barber is **DISMISSED** **WITHOUT PREJUDICE** for failure to exhaust state remedies; and,
3. A certificate of appealability will not issue because reasonable jurists would not debate whether the petition states a valid claim of the denial of a constitutional right or this Court's procedural rulings with respect to petitioner's claims. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

BY THE COURT:

/s/ Jan E. DuBois
JAN E. DUBOIS, J.